

**NOTICE:**

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

**Department 53  
Superior Court of California  
800 Ninth Street, 3rd Floor  
LOREN E. MCMASTER, Judge  
Terri West, Clerk  
D. Calmes/V. Carroll, CA, Bailiff**

**Friday, June 13, 2008, 2:00 PM**

Item 1 **05AS00083**

**KATHY CAREY. ET AL VS. LENNAR CORPORATION. ET AL**

Nature of Proceeding: Determination of Good Faith Settlement

Filed By: Hoang, Lynette P.

Cross defendant Fischer's motion for a determination its settlement with US Home is in good faith is unopposed and granted. Fischer installed tile in two of the three homes. Fischer contends its works was done in accordance with plans and specifications but is settling for \$5,000.00 to avoid further litigation costs.

The Court will sign the order submitted with the motion.

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Item 2 **05AS05269**

**CAROLINA CASUALTY INSURANCE CO VS. RENWOOD GROUP. INC**

Nature of Proceeding: Motion for Leave to File Cross-Complaint

Filed By: Davis, Whitney A.

Defendant's motion for leave to file a cross-complaint is granted.

Defendant was sued by two employees and tendered its defense to plaintiff. The underlying action was settled and plaintiff filed this action for breach of contract contending that defendant did not pay the deductible.

Defendant's proposed cross-complaint alleges claims for breach of contract, bad faith, and fraud. This is a compulsory cross-complaint as the claims are related to the subject matter of the complaint. *AL Holding v O'Brien & Hicks* (1999) 75 Cal.App.4th 1310, 1313-1314. The Court must grant leave absent bad faith. *Silver Organizations Ltd. v Frank* (1990) 217 CalApp.3d 94, 98-99.

Defendant claims it did not know it had these claims because it dealt only with Monitor and did not know the relationship between Monitor and plaintiff until after the deposition of Fogg in April 2008. Defendant has not been diligent and its contention that it did not learn of the claims until recently strains credulity. Nonetheless the Court cannot find that defendant has acted in bad faith.

If some causes of action are time-barred, plaintiff may demur on that ground.

There is no trial date.

Defendant shall file the cross complaint forthwith.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

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Item 3     **07AS02179**

**STEVEN OLDS. KAREN OLDS VS. DAWN BARBOSA. ET AL**

Nature of Proceeding: Motion to Withdraw as Counsel

Filed By: Klauschie, Jack A.

This matter is dropped from calendar.

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Item 4     **07AS04615**

**JESSE VASQUEZ. ET AL VS. ANTHONY ROBERT PORTILLO. ET AL**

Nature of Proceeding: Motion to Withdraw as Counsel

Filed By: Nugent, Christina M.

The motion to withdraw by counsel for defendant is unopposed and granted on condition proof of service on the client of the declaration and order client is filed in Department 53 before the time of the hearing,

The Court will sign the formal order submitted with the moving papers.

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Item 5     **07CS00071**

**TINA TAYLOR VS. ALLSTATE INSURANCE COMPANY**

Nature of Proceeding: Motion to Appoint Arbitrator in Re: Underinsured Motorist Claim

Filed By: Allred, Gordon W.

Claimant's motion to appointment of an arbitrator is granted. The parties have been unable to agree on an arbitrator and have submitted their respective choices.

Claimant's choices are Joe Ramsey, Craig McIntosh, Ernie Long, and Allen Owen. Respondent's choices are Mike Stinson, Nick Lowe, Dan Quinn, and Don Walter. The Court appoints Nick Lowe as arbitrator.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

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Item 6     **2007-00880881-CU-WT**

**KEITH EIDE VS. MICROSOFT CORPORATION**

Nature of Proceeding: Motion to Quash Deposition Subpoenas and for Protective Order

Filed By: Newell, Amanda B.

This matter is dropped from calendar.

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Item 7     **2007-00880881-CU-WT**

**KEITH EIDE VS. MICROSOFT CORPORATION**

Nature of Proceeding: Motion to Compel Further Responses to Request for Production of Docs

Filed By: Bogue, Maureen K.

This matter is dropped from calendar.

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Item 8     **2007-00882232-CU-PA**

**JOSEPH AUGUSTINE VS. ESTEHER KIM**

Nature of Proceeding: Motion to Quash Subpoenas

Filed By: Noble, Charles E.

Plaintiff's motion to quash the subpoenas for his medical records is granted.

The subpoenas are overbroad. However, defendant is entitled to all records related to head, neck, upper and lower back, spine, arms, and legs. This limitation was suggested by plaintiff's attorney in his May 9, 2008 letter to defense counsel. Presumably plaintiff did not object to the lack of a time limitation as records related to his 1982 accident implicate the same areas of his body. This was a serious accident and plaintiff appears to have a pre-existing condition.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

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Item 9     **2008-00002737-CU-OR**

**DARLENE WILLIAMS VS. WILLIAM SCOTT HENLEY**

Nature of Proceeding: Hearing on Demurrer (Liquidation Properties, Inc)

Filed By: Straw, James T.

Defendant Liquidation Properties, Inc.'s Demurrer to Plaintiff's First Amended Complaint is sustained with and without leave to amend.

Moving party has failed to include notice of the tentative ruling system in the notice of motion in compliance with C.R.C., Rule 3.1308 and Local Rule 3.04(D). Local Rules for the Sacramento Superior Court are available on the Court's website at [http://www.saccourt.com/geninfo/local\\_rules/local\\_rules.asp](http://www.saccourt.com/geninfo/local_rules/local_rules.asp)

Counsel for moving party shall make himself/herself available for a telephonic appearance for oral argument, should opposing party fail to give proper notice.

Plaintiff's First Amended Complaint ("FAC") alleges 11 causes of action: the 1<sup>st</sup> for Breach of Contract; the 2<sup>nd</sup> for Intentional Misrepresentation of Fact/Fraud; the 3<sup>rd</sup> for Negligent Misrepresentation of Fact; the 4<sup>th</sup> for Violation of the Federal Truth in Lending Act; the 5<sup>th</sup> for Predatory Lending in Violation of Financial Code §4970 et seq.; the 6<sup>th</sup> for Unfair Business Practices in Violation of Cal. Bus. and Prof. Code §17200, the 7<sup>th</sup> for Fraudulent, Deceptive, and Unfair Dealing by Home Equity Purchasers in Violation of Cal. Civil Code §1695 et seq.; the 8<sup>th</sup> for Intentional Infliction of Emotional Distress; the 9<sup>th</sup> for Negligent Infliction of Emotional Distress; the 10<sup>th</sup> for Declaratory Relief; and the 11<sup>th</sup> for Accounting.

Defendant demurs to the 1<sup>st</sup> through 9<sup>th</sup> causes of action on the grounds that they fail to state facts sufficient to constitute a cause of action and on the grounds of uncertainty.

Plaintiff's FAC alleges that she was the victim of a scam, in which she was approached by individuals who offered to help her avoid foreclosures. They refinanced the property, gave her some money, but kept the remainder, then forged a grant deed from plaintiff to defendant Walker, who then borrowed money against the property, did not pay the loan and allowed the property to be sold at a foreclosure sale.

The only operative fact alleged against this defendant is that it received the Trustee's Deed upon sale in January 2008, as alleged in para. 28 of the FAC.

In opposition, plaintiff concedes that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 9<sup>th</sup> causes of action should be dismissed as against this defendant. Thus, the demurrers to those causes of action are sustained without leave to amend.

As those causes of action are incorporated by reference into the remaining causes of action, the demurrer to the remaining causes of action is sustained, with leave to amend.

The demurrer to the 6<sup>th</sup> cause of action for Unfair Business Practices in Violation of Cal. Bus. and Prof. Code §17200, is sustained with leave to amend.

Plaintiff has not alleged any predicate act sufficient to state a cause of action for unfair competition against this defendant. The allegation that cross-defendant purchased real property encumbered by a loan of over \$464,000 for the sum of \$154,000 does not allege an unfair business practice. This was a foreclosure sale.

The demurrer to the 7<sup>th</sup> cause of action for Fraudulent, Deceptive, and Unfair Dealing by Home Equity Purchasers in Violation of Cal. Civil Code §1695 et seq.; is sustained with leave to amend.

This defendant is not alleged to have entered into a home equity sales contract. Plaintiff's complaint, attached as Exhibit G, makes no reference to this defendant.

The demurrer to the 8<sup>th</sup> cause of action for Intentional Infliction of Emotional Distress, is sustained with leave to amend.

No facts are alleged against this defendant.

The Court does not rule on the 10<sup>th</sup> and 11<sup>th</sup> causes of action, as they are not the subject of this demurrer. (MPA, 9:9-11.)

Plaintiff may file and serve a second amended complaint not later than Monday, June 23, 2008. The responsive pleading shall be due filed and served 10 days there after (15 days if service is by mail). Although not required by court or local rule, should the responsive pleading be a demurrer or motion to strike, a copy of the amended pleading should be attached.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

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Item 10 **2008-00002737-CU-OR**

**DARLENE WILLIAMS VS. WILLIAM SCOTT HENLEY**

Nature of Proceeding: Demurrer/motion to Strike (Citi Residential and CR)

Filed By: Winters, Fred Timothy

Defendants Citi Residential Lending, Inc. and CR Title Services, Inc.'s Demurrer to Plaintiff's First Amended Complaint is sustained with and without leave to amend.

Moving parties have failed to include notice of the tentative ruling system in the notice of motion in compliance with C.R.C., Rule 3.1308 and Local Rule 3.04(D). Local Rules for the Sacramento Superior Court are available on the Court's website at [http://www.saccourt.com/geninfo/local\\_rules/local\\_rules.asp](http://www.saccourt.com/geninfo/local_rules/local_rules.asp) Counsel for moving parties shall make himself/herself available for a telephonic appearance for oral argument, should opposing party fail to give proper notice.

Plaintiff's First Amended Complaint ("FAC") alleges 11 causes of action: the 1<sup>st</sup> for Breach of Contract; the 2<sup>nd</sup> for Intentional Misrepresentation of Fact/Fraud; the 3<sup>rd</sup> for Negligent Misrepresentation of Fact; the 4<sup>th</sup> for Violation of the Federal Truth in Lending Act; the 5<sup>th</sup> for Predatory Lending in Violation of Financial Code §4970 et seq.; the 6<sup>th</sup> for Unfair Business Practices in Violation of Cal. Bus. and Prof. Code §17200, the 7<sup>th</sup> for Fraudulent, Deceptive, and Unfair Dealing by Home Equity Purchasers in Violation of Cal. Civil Code §1695 et seq.; the 8<sup>th</sup> for Intentional Infliction of Emotional Distress; the 9<sup>th</sup> for Negligent Infliction of Emotional Distress; the 10<sup>th</sup> for Declaratory Relief; and the 11<sup>th</sup> for Accounting.

Defendants demur to all causes of action on the grounds that they fail to state facts sufficient to constitute a cause of action and on the grounds of uncertainty.

Plaintiff's FAC alleges that she was the victim of a scam, in which she was approached by individuals who offered to help her avoid foreclosure. The complaint alleges that defendants refinanced the property, gave plaintiff some money, but kept the remainder, then forged a grant deed from plaintiff to defendant Walker, who then

borrowed money against the property, did not pay the loan and allowed the property to be sold at a foreclosure sale.

The moving defendants are Citi, an institutional lender who lent money to Walker after Walker acquired title. CR was the foreclosure trustee, when that loan went unpaid.

Defendants demur on the grounds on uncertainty as each cause of action is alleged against all defendants. Each cause of action is incorporated by reference into all successive causes of action.

Plaintiff concedes that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 9<sup>th</sup> causes of action should be dismissed as against these moving defendants. Thus, Moving Party's demurrers to those causes of action are sustained without leave to amend.

As those causes of action are incorporated by reference into the remaining causes of action, the demurrer to the remaining causes of action is sustained, with leave to amend.

The demurrer to the 6<sup>th</sup> cause of action for Unfair Business Practices is sustained with leave to amend. It is not alleged that the loan was in excess of the property's value, nor is it clear how an offer of "cash for keys" constitutes an unfair business practice.

The demurrer to the 7<sup>th</sup> cause of action for Fraudulent, Deceptive, and Unfair Dealing by Home Equity Purchasers in Violation of Cal. Civil Code §1695 et seq. is sustained with leave to amend. It is unclear how Citi is an equity purchaser, pursuant to Civil Code section 1695.1(a)(3), as it is not alleged in the FAC that Citi or CR were part of any home equity sales contract.

The demurrer to the 8<sup>th</sup> cause of action for Intentional Infliction of Emotional Distress is sustained with leave to amend.

The FAC fails to allege facts to support the contention that these defendants were complicit in the fraud perpetrated on the plaintiff.

The demurrer to the 10<sup>th</sup> cause of action for Declaratory Relief and the 11<sup>th</sup> for Accounting, are sustained with leave to amend.

The allegations of para.100, that these defendants held themselves out as the owners of the real property is inconsistent with the remainder of the allegations against these defendants, that CR was the foreclosure trustee, only and Exhibit K, the Trustee's Deed Upon Sale, which does not show either defendant as an owner.

Plaintiff may file and serve a second amended complaint not later than Monday, June 23, 2008. The responsive pleading shall be due filed and served 10 days there after (15 days if service is by mail). Although not required by court or local rule, should the responsive pleading be a demurrer or motion to strike, a copy of the amended pleading should be attached.

The Motion to Strike the punitive damage allegations is granted. Plaintiff has conceded the motion to strike, except as to the allegations pertaining to the intentional

infliction of emotional distress cause of action. As leave to amend is granted, on the demurrer, plaintiff may amend to allege punitive damages, if appropriate, as to that cause of action, only.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

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Item 11 **2008-00002737-CU-OR**

**DARLENE WILLIAMS VS. WILLIAM SCOTT HENLEY**

Nature of Proceeding: Motion to Strike

Filed By: Winters, Fred Timothy

The motion to strike is subsumed in the ruling on the demurrer.

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Item 12 **2008-00006627-CU-IP**

**FREEDOM COMMUNICATIONS LLC VS. DANIEL SATTEL**

Nature of Proceeding: Hearing on Demurrer

Filed By: Peterson, Glenn W.

This matter is continued to 6/19/2008 at 02:00PM in this department.

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Item 13 **2008-00006738-CU-OE**

**CALIFORNIA CORRECTIONAL SUPERVISOR ORGANIZATION VS. CALIFORNIA**

Nature of Proceeding: Hearing on Demurrer

Filed By: Pearson, Ronald R.

Defendant's demurrer to the complaint on the ground that another action is pending is sustained and its motion to stay the action is granted. This matter is ordered stayed pending resolution of the San Francisco action. The Court will not direct an amended complaint be filed nor dismiss the action at this time in light of granting the stay. Depending on the outcome of the San Francisco action, Plaintiff may seek leave to amend the complaint and pursue the action and/or defendant may seek to dismiss the action on the grounds that it is moot.

Plaintiffs bring this action on behalf of supervisory employees of the Department of Corrections. There are several causes of action but the gist of the complaint is that defendant violated Government Code section 19849.18 when it gave non-supervisory employees a retroactive pay increase to July 2005 and plaintiff's employees a retroactive increase to January 2007.

On June 20, 2007 the California Correctional Peace Officers Association filed an action in San Francisco County alleging the same violation. Although the causes of action are not the same, the essential issue is identical. "If the Court exercising original

jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same as long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings. *Plant Insulation Co. v Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 788.

Plaintiffs request leave to amend to allege that this action is brought only on behalf of their members, meaning the parties will not be identical. Plaintiffs also argue they should be allowed to proceed as the San Francisco court declined jurisdiction when it denied their motion for leave to intervene.

Refusal to grant intervention does not mean that San Francisco has declined to exercise jurisdiction. San Francisco was the first court to assume jurisdiction and it retains it. *Slinack v Superior Court* (1932) 216 Cal.00, 106. The primary issue is the same and affects all supervisory correctional officers, regardless of whether they are members of CCSO or CCPOA.

To permit plaintiffs to proceed would subject defendant to two suits over the same subject matter with the possibility of inconsistent judgments.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

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Item 14 **2008-00009989-CU-PT**

**IN RE: ELIJAH MEKHI DUFFY DONALDSON**

Nature of Proceeding: Petition for Change of Name

Filed By: Duffy, Karla J.

Continued to July 16, 2008. The father must be served or sign the petition.

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Item 15 **2008-00010024-CU-PT**

**IN RE: BALBIR SINGH**

Nature of Proceeding: Petition for Change of Name

Filed By: Singh, Balbir

The petition for name change is unopposed and is granted.

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Item 16 **06ED05075**

**STATE OF CALIFORNIA. ET AL VS. RICHARD B. SATTERFIELD**

Nature of Proceeding: Notice of Hearing on Claim of Exemption



Filed By: Vives-Almodovar, R.

The claim of exemption is denied.

The court is without jurisdiction to grant an exemption where, as here, the debt is incurred for the "common necessities of life." CCP section 706.051(c)(1); *J.J. MacIntryre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16. It is presumed that wrongfully obtained unemployment insurance payments were used for the necessities of life. The judgment creditor, however, will accept less than the maximum allowable amount.

The sheriff is ordered to withhold \$220.00 per pay period or \$880.00 per month. Any amounts retained in excess thereof are to be returned to the judgment debtor.

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Item 17 **06ED08407**

**STATE OF CALIFORNIA. ET AL VS. QUIANA M. BRADLEY**

Nature of Proceeding: Notice of Hearing on Claim of Exemption

Filed By: Michalak, B.

The claim of exemption is denied.

The court is without jurisdiction to grant an exemption where, as here, the debt is incurred for the "common necessities of life." CCP section 706.051(c)(1); *J.J. MacIntryre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16. It is presumed that wrongfully obtained unemployment insurance payments were used for the necessities of life. The judgment creditor, however, will accept less than the maximum allowable amount.

The sheriff is ordered to withhold \$75.00 per pay period or \$150.00 per month. Any amounts retained in excess thereof are to be returned to the judgment debtor.

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Item 18 **07AM00293**

**BENEFICIAL CALIFORNIA INC VS. CHARLES A REESE**

Nature of Proceeding: Notice of Hearing on Claim of Exemption

Filed By: Stebbins, Donald R.

The claim of exemption is granted. Judgment debtor's expenses exceed her income and none of the expenses is excessive

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Item 19 **07AM06687**

**DISCOVER BANK VS. BRAD MITCHELL**

Nature of Proceeding: Notice of Hearing on Claim of Exemption

Filed By: Stebbins, Donald R.

The claim of exemption is denied to the extent of \$100.00 per pay period or \$200.00 per month. Food, entertainment, and clothing are excessive.

The sheriff may withhold \$100.00 per pay period of \$200.00 per month.

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Item 20 **07AM12275**

**CALIFORNIA BUILDER APPLIANCES VS. KIMMEL BUILDING**

Nature of Proceeding: Motion to Compel 1. Interrogatories 2. Admissions be Deemed Admitted  
Filed By: Kabanuck, Glenn D.

Plaintiff's motion to compel defendant Kimmel to answer interrogatories is unopposed and granted. Compliance without objections shall be by June 23, 2008.

Sanctions are denied as the motion is not opposed. Although California Rules of Court, 3.1030(a) [former Rule 341(a)] purports to authorize sanctions if the motion is unopposed, the Court declines to do so, as the specific statutes governing this discovery authorize sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the C.R.C. must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmater, Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal. App. 3d 481.

Plaintiff's motion for an order that certain matters be deemed admitted is granted unless defendant serves a response in substantial compliance with CCP section 2033.220 before the time of the hearing. CCP section 2033.280(c). If plaintiff receives responses, it shall inform the Court.

Mandatory monetary sanctions in the amount of \$480.00 (two hours, \$240.00 per hour) are ordered against defendant. Sanctions shall be paid by July 14, 2008. If sanctions are not paid by the due date, prevailing party may prepare a formal order on the sanctions award for the Court's signature for enforcement purposes. *Newland v Superior Court* (1995) 40 Cal.App.4 608, 610.

This minute order is effective immediately. No formal order or further notice is required, the tentative ruling providing sufficient notice.

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Item 21 **07CM00399**

**NATIONAL CREDIT ACCEPTANCE. INC. VS. DOLORES L YEE. ET AL.**

Nature of Proceeding: Petition to Confirm Arbitration Award  
Filed By: Sanders, Charles

The petition to confirm the arbitration award is unopposed and granted. Petitioner shall submit a formal order and judgment for the Court's signature.

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Item 22 **07ED26865**

**STATE OF CALIFORNIA. ET AL VS. ARNOLD BLANKSON**

Nature of Proceeding: Notice of Hearing on Claim of Exemption

Filed By: Michalak, B.

The claim of exemption is denied.

The court is without jurisdiction to grant an exemption where, as here, the debt is incurred for the "common necessities of life." CCP section 706.051(c)(1); *J.J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16. It is presumed that wrongfully obtained unemployment insurance payments were used for the necessities of life. The judgment creditor, however, will accept less than the maximum allowable amount.

The sheriff is ordered to withhold \$200.00 per pay period or \$400.00 per month. Any amounts retained in excess thereof are to be returned to the judgment debtor.

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